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January 3, 2008

U.S. Environmental Protection Agency
Docket ID No. EPA-HQ-OW-2007-1126
EPA Docket Center (EPA/DC)
Water Docket, MC 2822T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: draft Gulf Hypoxia Action Plan 2008 (Docket ID No. EPA-HQ-OW-2007-1126)

Dear Sir or Madam:

The following are comments on the draft *Gulf Hypoxia Action Plan 2008 for Reducing, Mitigating, and Controlling Hypoxia in the Northern Gulf of Mexico and Improving Water Quality in the Mississippi River Basin* (hereafter, the Plan). These comments reflect the thoughts and concerns of the signatory organizations, which are members of the Mississippi River Water Quality Collaborative, a partnership of conservation organizations and environmental law firms representing nine of the ten states along the Mississippi River. The Collaborative was created for the purpose of improving water quality in the Mississippi River and Gulf of Mexico.

First, we would like to make the following general, overarching comments:

- 1) The Plan provides a well-written summary of the problem, but offers a less specific set of actions and time frames than the 2001 *Action Plan for Reducing, Mitigating, and Controlling Hypoxia in the Northern Gulf of Mexico*. Unlike the 2001 Plan, this Plan does not provide a clear indication of how goals will be reached because it is muddled by an overwhelming number of voluntary options. If participating agencies want to reach the 2015 goal, specific and measurable phased actions must be part of the Plan.
- 2) There must be new funds to fully implement the Plan. The Plan states that funding needs and sources should be identified, but does not identify the pursuit of *new* federal funding as a specific action. The pursuit of new funding should be a primary action of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force because (as the Plan acknowledges) funding beyond what is currently available is necessary to reduce the size of the hypoxic zone. The Task Force must submit budgets to the appropriate federal agencies until the Plan is adequately funded. It is not enough to say that programs need to be funded; the Plan should outline how new funds will be acquired.
- 3) More emphasis should be given to the adoption of numeric nitrogen and phosphorus water quality criteria. The Plan should include a deadline by which all states will have adopted numeric criteria. There should also be a date by which EPA establishes numeric criteria for the Mississippi River main stem, since it is an interstate water. As the National Research Council stated in its 2007 report *Mississippi River Water Quality and the Clean Water Act*, "Numerical federal water quality criteria, and state water quality standards for nutrients, are essential precursors to reducing nutrient inputs to the river

and achieving water quality objectives along the Mississippi River and for the northern Gulf of Mexico” (p. 10).

Additionally, we have the following comments:

Noted Improvements

- We applaud the addition of “*and Improving Water Quality in the Mississippi River Basin*” to the title of the Plan.
- We applaud the maintenance of the 5,000 square kilometer by 2015 goal for the hypoxic zone, and the acknowledgement that it is important to move forward with action instead of waiting for more data.
- We applaud the promotion of a 45% reduction in total nitrogen and total phosphorus flux.

Suggestions

- We applaud the fact that the Plan supports targeting areas and states where actions will most effectively reduce nutrient pollution. The Plan provides some data indicating what regions might be targeted, but fails to summarize the full array of existing data and boldly declare the specific watersheds and states that should be targeted. For example, there is no mention of the initial findings of the USGS/USEPA SPARROW modeling project.
- The Plan mentions the importance of Louisiana’s distributary (deltaic) network for capturing and filtering nutrients, but the proposed actions fail to emphasize targeting this particular geographic area. The Plan offers the State of Louisiana’s coastal protection/restoration program as an example of how to use existing state programs to enhance protection of the Gulf and local water quality (Action 2). However, Louisiana’s 2007 *Comprehensive Master Plan for a Sustainable Coast* includes proposed levee alignments that would effectively wall off much of the deltaic basin and coastal plain. While designs for “leaky levees” for water management have been proposed for these alignments, those designs could work at fundamental cross purposes with deltaic restoration, and could have serious effects on the filtering and flushing of nutrients. Given the questions remaining about which alternatives will be selected by the State and Corps of Engineers, it is premature for the Plan to assume that coastal restoration in Louisiana will take a form that makes a significant contribution to nutrient uptake from riverine waters before they reach the Gulf.
- The reduction of sediment is part of the *Within Basin Goal*, but otherwise is essentially absent from the Plan. The reduction of sediment should be emphasized throughout the Plan, since sediment is a source of phosphorus pollution.
- The Plan acknowledges the loss of USGS water quality monitoring stations, but does not make the reversal of that loss a high enough priority.
- The Plan should call not only for analyses of the impacts of biofuels, but also for the promotion of biofuels that provide high energy yields and are associated with less nutrient runoff. The Plan should incorporate the suggestions of the National Academy of Sciences’ 2007 report *Water Implications of Biofuels Production in the United States*.
- The Plan rightly mentions the use of nutrient removal technologies as a way to reduce nutrient pollution. The Plan should proclaim that many facilities lack nutrient removal technology and/or need an upgrade. Where numeric nutrient criteria are in place, either technology-based effluent limits or water quality-based effluent limits (whichever is most

stringent) must be incorporated into NPDES permits. Funding for new technology should be provided by an adequately-funded State Revolving Fund.

- The 2001 Plan called for the Task Force to assess the nutrient load reductions achieved and their effectiveness by December 2005 and every five years thereafter (Action 11). The 2008 Plan mentions that reductions have been achieved but does not provide a specific assessment of those reductions. The Plan should include an assessment of the Task Force's record and the actions undertaken since 2001 that have worked and not worked.
- The progress on reducing nitrogen and phosphorous should be reported in the state biennial 305(b) reports to U.S. EPA, in a specific section on Hypoxia.
- One unmentioned method for reducing nitrogen and phosphorus pollution is for the U.S. EPA to revise their secondary treatment requirements for wastewater treatment plants to include the removal of nutrients. Given that point sources contribute approximately 22% of the nitrogen and 34% of the phosphorus loads to the Gulf, a change in policy and an increase in funding to large treatment plants could reduce a significant amount of nutrient pollution while nonpoint programs are developed.
- One unmentioned way to reduce phosphorus pollution is for communities and states to pass regulations banning the use of phosphorus in fertilizers and cleaning products.
- The Plan fails to mention the Farm Bill's Conservation Compliance provision as a regulatory tool for reducing nitrogen and phosphorous pollution.
- One unmentioned critical need for the reduction of nitrogen and phosphorous pollution is the need for more inspections of facilities. The Plan should discuss the U.S. EPA's *Clean Water Act NPDES Compliance Monitoring Strategy for the Core Program and Wet Weather Sources* as a means of accomplishing these inspections. The Plan should also emphasize the need for states to inspect a higher percentage of major and minor facilities.
- While some benefit from nutrient management plans and other best management practices is inevitable, federal and state conservation funding should be tied to monitoring the actual water quality improvements achieved.
- Now that the Water Resources Development Act has been signed into law, the Plan should describe some of the Army Corps of Engineers' projects that will be capitalized upon to reduce and manage nutrient pollution.
- Special funding should be sought for those states with the most nutrient pollution, to reflect the resources they will require. Funding must be tied to strategies with specific targets for nutrient reduction, and monitoring and reporting requirements.
- The Plan fails to adequately emphasize the need for the adoption of common water quality monitoring techniques across agencies and states (at least for the Mississippi River).
- The Plan fails to discuss the need for states to assign the same designated uses for shared segments of the Mississippi River.
- In contrast to the 2001 Plan, the 2008 Plan fails to give a timeline for most of the actions proposed.
- The completion date of 2013 for state nutrient reduction strategies is too late; plans should be developed before then, with the understanding that they will be adapted over time thereafter.

Overall, we are pleased that the Plan incorporates the findings and recommendations of recent scientific reports on the Mississippi River and Gulf Hypoxia. However, we fear that too much reliance on existing resources and programs, without aggressive action to increase capacity for the *specific* objective of improving water quality in the Mississippi River and Gulf of Mexico, will once again leave us far short of achieving the Plan's three goals. Until special funding is provided for just this purpose, states have little incentive to spend their already inadequate resources on regional and national concerns. We hope you will take all of our comments under serious consideration, and we look forward to a bold, final *Gulf Hypoxia Action Plan 2008*.

Please feel free to contact Stacy James of Prairie Rivers Network (217-344-2371) if you have any questions about these comments.

Sincerely,

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